ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CA 06-631

APRIL 11, 2007

YUQUITA BRADLEY

APPELLANT

V.

ARKANSAS DEPARTMENT OF HUMAN SERVICES

APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, EIGHTH DISTRICT
[NO. JJN 04-1583]

HONORABLE WILEY AUSTIN BRANTON, JR., JUDGE

AFFIRMED

Appellant Yuquita Bradley appeals the termination of her parental rights to her three daughters, AH born in 2001, NC born in 2002, and EP born in 2004, as found by the Pulaski County Circuit Court. The children were removed from appellant's custody in August 2004 when she was incarcerated after a court appearance. No one was available to pick up AH or NC from daycare, and no one was available to care for EP, who had been hospitalized for problems related to reflux. Appellant was incarcerated for the majority of time her children were out of her custody. The trial court entered a termination of her parental rights on February 10, 2006. None of the putative fathers of the girls ever appeared or participated in this case, and consequently, their parental rights were also terminated. Appellant filed a timely notice of appeal from the order terminating her rights.

Appellant argues that the trial court clearly erred in terminating her parental rights because (1) she completed the requirements of her case plan to the extent she was capable of doing so, (2) the Department of Human Services (DHS) did not provide meaningful efforts to reunify the family, (3) the trial court ignored the psychologist's opinion that she simply needed a few more months of therapy and assistance to be prepared to parent the girls, and (4) the girls were bonded to their mother and were not better served in foster care or in being cleared for adoption. DHS and the children's attorney ad litem have filed a joint brief in opposition to appellant's arguments on appeal, asserting that there is no reversible error. We affirm.

The history of this case is as follows. On August 23, 2004, a report was made to DHS that three-year-old AH and two-year-old NC were at daycare and no one came to pick them up. Appellant was age twenty at this time. She had been to court that day, and she was sentenced to eighty-eight days in prison for a parole violation, but she had not made arrangements for her children. Persons listed on daycare information as family members who could pick up the children were called, but no one came before DHS left with AH and NC. One-month-old EP remained hospitalized. DHS took a 72-hour hold on all three children.

Appellant testified at the probable cause hearing on August 31, 2004, that she was incarcerated for violating her parole for aggravated assault. Appellant said she was not expecting that she would be incarcerated or she would have made arrangements for the children to stay with her mother. She explained that she had been charged with aggravated assault in 2003 because she had rammed her car into another vehicle driven by Eddie Pride,

putative father of EP and NC. Appellant was pregnant with EP, and her older daughters were in the car when she ran it into Eddie's vehicle.

Appellant stated that she had only finished the eleventh grade, and that she had held a couple of jobs, each for a couple of months. One job was at a nursing home and the other was at Sonic Drive-In.

The trial judge found probable cause to believe the children were dependent-neglected. He ordered that the girls remain in DHS custody, and he found that DHS had made reasonable efforts.

An adjudication hearing was conducted in October 2004, wherein DHS confirmed receipt of one application for a home study, which was from appellant's sister. The sister, Kenosha Bradley, testified at this hearing, stating that she could take care of appellant's three children, along with her four young children. Kenosha said she had a full-time job at Popeye's, which she had held for about four months. Appellant testified that she hoped to be released from incarceration in December 2004, but she wanted her sister to care for the children until that time.

The trial judge found that the children were dependent-neglected, that he was concerned that appellant had anger-control issues, that DHS should complete home studies on potential relative placements, and that appellant must undergo a psychological evaluation and abide by any recommendations. The judge ordered appellant to take advantage of any services available to her while incarcerated, but that she would be expected to obtain stable housing and employment upon release. DHS was required to take the children to visit

appellant in prison at least monthly, and thereafter, weekly. The judge set the goal as reunification, and he found that DHS had made reasonable efforts to provide services.

A review hearing was conducted in March 2005. Appellant remained incarcerated, and DHS confirmed that the appellant's sister was still interested in having the children placed with her, and the sister was willing to obtain larger housing to accomplish that goal. DHS had taken the girls to visit their mother in prison, though not every month, and the visits had gone well. The children appeared to be bonded with their mother. The goal remained reunification, and services were ordered to begin upon her release from incarceration.

At the permanency planning hearing in September 2005, DHS recommended that the goal be changed to termination of parental rights because the children had been out of their mother's custody for more than a year and the mother remained incarcerated. DHS admitted that appellant had completed a parenting class and an anger-management class while in prison. The two older girls remained in one foster home, and the baby was in another foster home. The girls had visited their mother in the correctional facility in Newport when transportation was available.

Appellant testified that she was set to be discharged from prison on November 23, 2005. She presented her certificates demonstrating completion of parenting and anger-management classes. She said she had just started the counseling she had requested because there was a waiting list in prison. Appellant said she planned to live with a cousin upon release, and she would obtain her own larger home in about a month if she were allowed to have her children. She believed she would have a secretarial job that her cousin would give

her at his car lot. Appellant complained that DHS had not brought her children regularly for visitation, and they had not brought the baby for the previous three months.

The judge ruled that the goal would be changed to termination, but that DHS would be required to offer services if and when appellant was released from prison. The judge expressed concern that incarceration prevented DHS from offering much in the way of services. He also noted that appellant exhibited behavioral concerns that led the judge to be skeptical of appellant's ability to parent. The judge wanted a psychological evaluation done prior to her release if at all possible.

The termination hearing was conducted in January 2006. Appellant had in fact been released from prison in November 2005. She had moved into a four-bedroom rented house. The psychologist, Dr. DeYoub, testified that he examined appellant and found her to have anti-social personality disorder and to be mildly mentally retarded with a full-scale IQ of 69. Dr. DeYoub said these findings were consistent with his observations of her when she was fifteen years old and in juvenile detention, although the current results indicated psychopathic tendencies. He stated that, "I have pretty severe concerns about her ability to manage herself, let alone three children." He explained that these problems featured aggression, instability, poor judgment, inability to learn from consequences, and repeated mistakes. Dr. DeYoub did not believe appellant capable of caring for her four, three, and two year old daughters. His report concluded by stating:

> I recommend against reunification with a mentally retarded and aggressive 21-year-old mother. If the court wants to pursue reunification services, then it would require at least six months of intervention, in which she would have to maintain her own place, a job, individual counseling, counseling with the children, parenting classes all

> over again, anger management all over again, and no involvement with any live-in boyfriends. Even if she did all that, we have a risk of placing three young children with a very impaired mother who actually has very little impulse control. She fights all the time, and this occurred in prison as well. She was aggressive and mentally retarded at 15 and she is the same way at 21, this is why I cannot recommend reunification and take a risk of putting the children through this.

The caseworker for DHS testified that appellant had tried to complete the requirements of her case plan since being released, with the exception of obtaining employment. She passed five drug screens; she was living in a four-bedroom house. DHS personnel testified that the children were adoptable, although the two older girls required some behavioral therapy. The older girls' therapist expressed some concern that these children had experienced difficulties in the foster-care system. One foster home was overcrowded, and there were allegations of abuse in the foster care homes. The therapist suggested that if termination was ordered, it would be beneficial for the older two girls to have therapeutic step-down visitation with their mother to say goodbye.

Appellant testified that she had been out of prison for about six weeks, that she first lived with her sister, but she presently lived in a rented four-bedroom house for $200 per month. She said she had been given two free months in exchange for cleaning the house. She denied living with her boyfriend. Appellant said she had done what was asked of her in the case plan: visiting her children, obtaining suitable housing, taking drug screens, and attending counseling. She said she was receiving Medicaid and food stamps, and she had a second interview for a job at a local hotel, so she expected to have employment. Appellant stated that she had learned from her mistakes and wanted to parent her children.

Counsel for DHS argued that the case could not remain open for another six months, under the best-case scenario, to see if appellant would be ready for reunification. At that point, the children would have been out of their mother's custody for nearly two years. The attorney ad litem agreed that termination was the proper course, despite the foster-care system not being ideal. The ad litem stated that even if appellant had made some progress, it was very recent and not apparently stable, especially where she did not have a job. Appellant's attorney argued that given appellant's circumstances, she had done everything possible to reach a stage of reunification. Appellant's attorney pointed out how poorly the foster-care system had served the children and how DHS had failed to do its job at trying to reunify the family. Her attorney also noted that the girls were bonded to their mother and deserved a chance to be with her.

The trial judge announced his findings at the conclusion of the case, stating that DHS had proved its allegations by clear and convincing evidence – that the children had been out of the home for more than twelve months, and that despite a meaningful effort on behalf of DHS to rehabilitate the conditions that caused removal, those conditions had not been remedied by the parent. The judge found that the children had been out of the home for sixteen months, that she had been absented from her children's lives due to her own actions, that she had made an effort to comply with the case plan, but that it did not make an effective difference. The judge found compelling the evaluation offered by Dr. DeYoub that cast doubt on her ability to ever parent these children with her significant mental deficits and maladies. He noted that even if he were to continue the case, it would be another six months

at least before reunification could be considered, and this was contrary to statutory mandate to provide permanency for the children. Termination of appellant's parental rights was announced, and an order commemorating these findings was entered of record. This appeal followed.

We review termination of parental rights cases de novo. *Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* Grounds for termination of parental rights must be proven by clear and convincing evidence. *M.T. v. Ark. Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). Clear and convincing evidence is that degree of proof that will produce in the fact finder a firm conviction as to the allegation sought to be established. *Anderson v. Douglas*, 310 Ark. 633, 839 S.W.2d 196 (1992). When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *J.T. v. Arkansas Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). We give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* Where there are inconsistences in the testimony presented at a termination hearing, the resolution of those inconsistencies is best left to the trial judge, who heard and observed these witnesses first-hand. *Dinkins v. Arkansas Dep't of Human Servs., supra.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence

is left with a definite and firm conviction that a mistake has been made. *Id.* We are not left with a distinct and firm conviction that a mistake was made in this instance.

The goal of Arkansas Code Annotated section 9-27-341 (Supp. 2003) is to provide permanency in a minor child's life in circumstances in which returning the child to the family home is contrary to the minor's health, safety, or welfare and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the minor child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Parental rights may be terminated if clear and convincing evidence shows that it is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3). Additionally, one or more grounds must be shown by clear and convincing evidence. Arkansas Code Annotated section 9-27-341(b)(2)(A) (Repl. 1998) provides the grounds upon which a termination of parental rights may be established.

Appellant does not dispute that the children had been out the home for far longer than the requisite period of time, nor does she dispute that she needed assistance to learn how to effectively behave as a parent. Her contention is that the trial judge clearly erred in terminating her parental rights where she had completed the case plan requirements set forth by DHS to the best of her ability. She further asserts that DHS failed to provide meaningful efforts to rehabilitate the conditions and to meet the goal of reunification.

We are convinced that DHS's efforts were less than stellar, and we are mindful that there are problems within the foster care system. In particular, appellant correctly notes that DHS failed to implement a case plan for several months after the children came into DHS custody, failed to provide the necessary transportation for the girls to consistently visit their

mother while she was incarcerated, failed to transport appellant to some hearings necessitating delays, and failed to complete a home study on appellant's sister's home as a potential placement. Despite these failings, appellant does not persuade where her incarceration made the provision of services to her extremely difficult if not impossible. Moreover, our focus on appeal is whether the trial court was clearly erroneous to conclude that appellant was not prepared to take custody of her children at the time of the termination hearing. The trial court did not clearly err. The duty remains upon the *parent* to rectify the situation so that her children can be returned. In that light, we cannot agree that reversible error has occurred.

Appellant also takes issue with the trial court not accepting Dr. DeYoub's opinion that appellant would benefit from extended services and therapy, supporting her argument that she simply needed more time for reunification. Appellant fails to recognize that those comments were offered in the alternative, i.e., if the trial court did not accept his ultimate opinion that he could not recommend reunification because of appellant's inherent mental and intellectual problems.

We are duty-bound to support the trial court's action that gives effect to the legislature's overriding intent, which is to protect the best interest of our state's children in achieving a safe and permanent home. Ark. Code Ann. § 9-27-341(a)(3). While appellant attempted to be the parent that her children needed, she was not able to be that parent for at least sixteen months. The statutory construct in our Juvenile Code is to make a permanency plan and set it into action. *See Camarillo-Cox v. Dep't of Human Servs.*,__ Ark. __, __ S.W.3d __ (Jan. 20, 2005); *Trout v. Dep't of Human Servs.*, __ Ark. __, __ S.W.3d __ (Nov. 4, 2004);

Dinkins v. Arkansas Dep't of Human Servs., *supra*. Appellant wanted to continue to work toward reunification. Evidence that a parent begins to make improvement as termination becomes more imminent will not outweigh other evidence demonstrating a failure to comply and to remedy the situation that caused the children to be removed in the first place. *Compare Camarillo-Cox v. Arkansas Dep't of Human Servs.*, *supra*. The overriding legislative directive is to provide permanency for children where return to the home cannot be accomplished within a reasonable time. Given the grave concerns about appellant's mental and emotional capability of providing a safe and permanent home for her daughters, we affirm the trial court's decision.

GLOVER and HEFFLEY, JJ., agree.